

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Special Appeal No. 833 of 2019

State of Uttarakhand and Others ...Appellants
Vs.
Tula Singh Tariyal ...Respondent

Presence:

Mr. C.S. Rawat, learned Chief Standing Counsel for the appellants/State.

Mr. Vijay Bhatt, learned counsel for the respondent.

**Coram: Hon'ble Ritu Bahri, C.J.
Hon'ble Rakesh Thapliyal, J.**

Hon'ble Rakesh Thapliyal, J. (Oral)

The instant appeal is preferred against the judgment and order passed by the learned Single Judge dated 22.12.2017 passed in Writ Petition (S/S) No. 3461 of 2017 as well as against the judgment and order dated 17.06.2019 passed in review application (MCC No. 19 of 2019).

2. Earlier against the judgment and order dated 22.12.2017 passed by the learned Single Judge in Writ Petition No. 3461 of 2017 a Special Appeal No. 519 of 2018 was preferred and the appeal was dismissed by the Division Bench of this Court by the judgment and order dated 18.07.2018. While dismissing the Special Appeal the Division Bench also further observed that it is for the appellant, if so advised, to challenge the judgment again if necessary.

3. Subsequent thereto, the Review Application i.e. MCC No. 19 of 2019 along with the delay condonation application was filed by the State seeking review of the judgment and order dated 22.12.2017, but the same was also dismissed by the learned

Single Judge by the judgment and order dated 17.06.2019. While dismissing the review application, the learned Single Judge also observed in the judgment that there is no manifest error of law in the order passed by the Coordinate Bench dated 22.12.2017 as the same has been passed on the statement of the counsel for the State.

4. Now, in the instant appeal both the judgment dated 22.12.2017 as well as the judgment dated 17.06.2019, whereby, the review application was dismissed, are being challenged on the ground that the judgment and order dated 22.12.2017 were decided after taking into consideration the judgment rendered by the Coordinate Bench dated 23.12.2009 in Writ Petition (S/S) No. 270 of 2009 'Beer Singh Bhandari vs. State of Uttarakhand and Others' as well as the judgment rendered by the Division Bench dated 28.10.2014 in Special Appeal No. 417 of 2014 'State of Uttarakhand vs. Rajendra Prasad Pant'.

5. While rendering the judgment dated 22.12.2017 the Coordinate Bench have also mentioned that the State have not disputed this fact that the controversy, in fact, has been settled in the catena of the judgments rendered by this Court from time to time, the reference of which has been given in the judgment rendered by the Coordinate Bench of this Court in WPSS No. 270 of 2009 and the judgment rendered in Special Appeal No. 417 of 2014.

6. The learned counsel for the appellant submits that, in fact, the judgment rendered in the case of Beer Singh Bhandari vs. State of Uttarakhand and Others i.e. WPSS No. 270 of 2009 was pertaining to the employees, who earlier served under the Basic Education Board; whereas, the petitioner/respondents was the employee of non-government aided educational institution

and as such the judgment passed in the case of Beer Singh Bhandari is not applicable.

7. A further stand has been taken by the learned counsel for the appellant that the institution run earlier under the Basic Education Board were provincilized under the provisions of Uttarakhand School Education Act, 2006 and the services of employees working in Basic Education Board were given the status of Government employee w.e.f. 22.04.2006, by virtue of Section 58 of Uttarakhand School Education Act, 2006.

8. Learned counsel for the appellant submits that so far as the respondent/petitioners are concerned, the non-government aided schools were provincilized pursuant to the Government Order dated 08.10.2003, which is entirely different from the process of provincilization under the Uttarakhand School Education Act, 2006.

9. Apart from this, learned counsel for the appellant submits that as per Clause-8 of the Government Order dated 08.10.2003, which specifically pertains to the provincilization of the institution, whereby, the teaching and non-teaching staff were asked to give their consent by way of an affidavit of placing themselves at the bottom of the cadre and therefore they cannot claim parity at par with those who were serving under the Basic Education Board.

10. Apart from this, learned counsel for the appellant submits that, in fact, the matter, which was before the writ court the Rules *namely* U.P. Subordinate Education Clerical Service Rules, 1985, are applicable and, according to the said Rules the Junior Clerk is the first post of clerical cadre services and all the higher posts are filled up by way of promotion as per the provisions of aforesaid Service Rules.

11. To sum and substance the sole argument of the learned counsel for the appellant is that the issue, in fact, is not covered by the judgment rendered by this court in the case of Beer Singh Bhandari vs. State of Uttarakhand and Others, which was decided by the Coordinate Bench of this Court on 23.12.2009 in Writ Petition (S/S) No. 270 of 2009. We also peruse the judgment in the case of Beer Singh Bhandari and on perusing the said judgment one thing is very clear that the only difference between the two different class of employees are that one set of employees are working under the Basic Shiksha Parishad and, other one, in the non-government aided institution.

12. The stand as taken by the learned counsel for the appellant cannot be accepted, particularly, when the respondent/petitioners were serving admittedly in the aided educational institutions and merely on the ground that they were not serving under the Basic Shiksha Parishad the similar benefit as given to the teaching and non-teaching staff serving under the Basic Shiksha Parishad pursuant to the judgment passed by the Coordinate Bench of this Court in the case of Beer Singh Bhandari, cannot be denied.

13. In our opinion, there is no difference in between both the categories of employees serving in Basic Shiksha Parishad and in non-government aided institution and one thing is similar that the institution where both category of employees were serving were provincilized; therefore, we do not find any error on the face of the impugned judgment and the learned Single Judge rightly decided the petition in the light of the judgment rendered by the Coordinate Bench of this Court dated 23.12.2009 passed in Writ Petition (S/S) No. 270 of 2009 'Beer Singh Bhandari vs. State of Uttarakhand and Others' as well as the judgment rendered by the Division Bench dated 28.10.2014 in Special

Appeal No. 417 of 2014 ‘State of Uttarakhand vs. Rajendra Prasad Pant’.

14. Accordingly, we do not find any merit in the present appeal and is accordingly dismissed.

(Rakesh Thapliyal, J.)

(Ritu Bahri, C.J.)

08.05.2024

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